IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

FIRST APPEAL NO. 18 OF 1999

1. Shri Mortulo Ramchandra Gad, (since dec.) through LR's
of major age, r/o. H.No. 94,
Kundnem, Navelim,
Sanquelim-Goa.

1.1)Salu M. Gad,
Daughter of Mortulo R. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.2)Amit Manjrekar
Son of Mortulo R. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.3)Ramchandra M. Gad
Son of Mortulo R. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.4)Manisha R. Gad
Wife of Ramchandra M. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.5)Dinanath M. Gad
Son of Mortulo R. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.6)Diya D. Gad
Wife of Dinanath M. Gad
Navelim, Katarwada, Sanquelim, Goa.

1.7)Sanjay M. Gad
Son of Mortulo R. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.8)Narayan G. Gauns,
Son in law of Mortulo R. Gad,
Navelim, Durigwada, Sanquelim, Goa.

1.9)Laxmi N. Gauns,
Daughter of Mortulo R. Gad,
Navelim, Durigwada, Sanquelim, Goa.

1.10)Reshma R. Virdikar,
Daughter of Mortulo R. Gad, Widow,
Kodli, Tisk, Dabel, Goa.

1.11)Dhillan K. Sawant,
Son in law of Mortulo R. Gad, Kakoda Sawant Wada,
Near Mahadev Temple, Sanvordem, Goa.

1.12)Deepa D. Sawant,
Wife of Dhillan K. Sawant, Kakoda Sawant Wada,
Near Mahadev Temple, Sanvordem, Goa.

1.13)Uttam R. Gaonkar,
Son in law of Mortulo R. Gad, Usgao Gaonkarwada,
Near Government High School, Usgao, Goa.

1.14)Subhadra U. Gaonkar,
Wife of Uttam R. Gaonkar, Usgao Gaonkarwada,
Near Government High School, Usgao, Goa.

1.15)Suresh M. Shetye
Son in law of Mortulo R. Gad,
Bicholim Narvye, Goa.

1.16)Laxmi S. Shetye
Wife of Suresh M. Shetye,
Bicholim Narvye Goa.

1.17)Dharma Y. Gauns
Son in law of Mortulo R. Gad,
Navelim, Katarwada, Sanquelim, Goa.

1.18)Dikshita D. Gauns,
Wife of Dharma Y. Gauns,
Navelim, Katarwada, Sanquelim, Goa.

2. Smt. Jaiwanti Jaiwant Mandrekar,
of major age, r/o. Kundnem,
Sanquelim-Goa,
through her constituted
Power of Attorney holder,
Shri Mortulo R. Gad,
r/o. H.No. 94, Kundnem,
Navelim, Sanquelim-Goa. .... Appellants

Versus

1. Shri John Pinto (Since deceased) through LR's
of major age, r/o. H.No. 52,
New Post Office, Assonora,
Bardez, Goa.

1(a) Mrs. Ermina Pinto
W/o late John Pinto,
r/o. H. No. 52, Near Post Office,
Assonora, Bardez-Goa.

2. Shri Joseph Castelino
of major age,
r/o. H. No. 379,
Sangolda, Bardez, Goa. .... Respondents

Ms. R. Chodankar, Advocate for the Appellants.

Ms. Veronica Da Fonseca, Advocate for Respondent No. 1(a).

CORAM: **P.V. KAKADE, J.**
DATE: **11th August, 2006**

ORAL JUDGMENT

Heard learned Counsel for both the parties. Perused the record.

2. The appeal is preferred against the Judgment and Order passed by the Civil Judge, Senior Division, Bicholim, decreeing the suit and directing that the defendants shall jointly and severally pay an amount of Rs. 93,000/- with interest at the rate of 18% per annum from the date of filing of the suit till the actual payment.

3. The respondent-plaintiff filed the suit for recovery of the amount of Rs. 60,000/- alongwith interest which was advanced by plaintiff no.1 by way of friendly loan to defendant no.1 on 5/7/1989 to be repaid allegedly on demand with interest at the rate of 10% per annum. This amount was paid to defendant no.1 through plaintiff no.2 against a written acknowledgment given by defendant no.1. Plaintiff no.1 being in need of money demanded the said amount from the defendants for the first time on 1/11/1994. As they did not pay the amount, police complaint was lodged, but inspite of that amount was not paid. Hence legal notice was issued and finally filed the suit.

4. The defendants, inter alia, denied the allegations on various grounds including the ground that the suit was barred by law of limitation. It was further submitted that plaintiff no.1 and defendant no.2 were

working in Kuwait. The defendant no.2 was not conversant with the methods and formalities of sending money to defendant no.1 in Goa and hence she had to take help of plaintiff no.1 and his wife, who were residing at Kuwait for sending money to defendant no.1. The defendant no.2 was giving part of his salary to plaintiff no.1 every month to be sent to defendant no.1 and plaintiff no.1 used to send the said money to defendant no.1 through plaintiff no.2. It is further denied that any amount was taken from plaintiff no.1 and as such liability to pay came to be denied and suit was sought to be decreed with costs.

5. The learned Trial Judge after hearing both the parties came to the conclusion on the basis of available evidence that plaintiffs proved that defendants jointly and severally were liable to pay an amount of Rs. 93,000/- alongwith interest at the rate of 18% per annum from 24/1/1996 till the actual payment. It was further held that suit was not barred by law of limitation.

Hence the present appeal.

6. At the out set, it may be noted that apart from the various contentions raised on behalf of the parties, it is clear from the record that the suit can be determined on the issue of law of limitation and we need not go into other aspect. It must be noted that even though the plaintiff has averred in his plaint that the amount was advanced as a friendly loan on 5/7/1989 payable back to plaintiff no.1 “as and when demanded”, the suit document itself does not show that either document can be construed as promissory note or there is any specification that the amount was to be repaid on demand in any manner whatsoever. If this is so, then the transaction between the parties is nothing less or more than a friendly loan advanced on 5/7/1989 between the parties. The learned Trial Judge has definitely fallen in error while holding that demand of repayment was made for the first time on 1/11/1994 and therefore the suit filed on 4/1/1996 was within 3 years and therefore within limitation. However, in absence of any other evidence to the contrary the Trial Judge has definitely erred in relying on the statement in pleading between the parties that an amount was advanced and was to be repaid on demand. Therefore, the view which is taken by the Trial Court that the suit transaction is covered by Article 22 of the Limitation Act is erroneous and has to be set aside. Record shows that suit transaction is entirely covered by the Article 19 of the Limitation

Act which provides the limitation period for recovery of the amount of 3 years which is the time from which period begins to run. In the present case before me loan is evidently given in the year 1989 and therefore, suit filed on 4/1/1996 is beyond period of 3 years and therefore barred by the law of limitation.

7. Apart from this aspect, I have also perused evidential aspect on record which we need not go into. The fact remains that no cause of action arose for filing of the suit on 1/11/1994 at all, as the plaintiffs failed to prove that amount was to be repaid on demand which was made on that day. In view of this position, the order passed by the lower Court can not sustain in law.

8. In the result, the appeal is allowed with no order as to costs. Judgment and Order passed by the Trial Court is hereby set aside and the suit stands dismissed.

The amount deposited by the plaintiffs in the Court with interest thereon, shall be returned to the appellants. The Bank Guarantee furnished by the appellants in view of the Order dated 2/07/1999 also shall

be returned as per rules.

P.V. KAKADE, J.

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